IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 526 of 2000.

Date of Decision: 14-8-2007.

State of H P. Appellant.

Versus

Subhash Chand and another. Respondents.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondents : Shri N.K. Thakur, Advocate.

Surinder Singh, J. (oral)

The respondents were put on trial and were acquitted for the offences punishable under Section 451, 323 and 506 read with Section 34 of the Indian Penal Code by the Judicial Magistrate, which has been assailed in this appeal.

Precisely, the case of the prosecution has been that on 22.9.1998, Dalbir Singh complainant got recorded his statement under Section 154of the Code of Criminal Procedure that the respondents had entered into his court yard and gave beatings to his wife Ramla Devi with a danda causing simple injuries on her person and they also threatened him with dire consequences. Consequently, FIR Exhibit PW1/A was registered after getting the Medico Legal Certificate of Smt. Rama Devi. During the course of investigation, the Police prepared the site plan and also took into possession the blood stained shirt of Rama Devi and Danda Exhibit P2 was

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Whether reporters of the Local papers are allowed to see the judgment? Yes.

produced by one of the respondents Shri Subhash Chand which was taken into possession vide memo Exhibit PW3/A. The police recorded the statements of witnesses and after completing the investigation, the challan was presented in the court for trial.

The respondents were charge-sheeted under the aforesaid sections. They plead not guilty and claimed trial.

The prosecution examined the witnesses to prove their case and the statements of the respondents were also recorded under Section 313 of the Code of Criminal Procedure. Their case was denial simplicitor. Upon hearing the parties, after going through the record, the learned trial Court acquitted the respondents on the grounds:

i) That there was a contradiction in the story initially set by the prosecution and as deposited before the trial court on material particulars;

ii) The witnesses of the recovery of the stick (Danda) and shirt did not support the case of the prosecution even there was also a contradiction regarding the respondents having the sticks with them;

iii) Witness Mangu (PW6) has also contradicted the prosecution case. Kishori Lal (PW1) the other eye witness had civil litigation with the respondents and chances of concoction could not be ruled out and further that the said witness has improved upon his earlier statement recorded by the Police and was doing business in the compound of the complainant which shows his close affinity with him.

Learned trial Court also took note of the civil litigation with respect to the land where the altercation is alleged to have taken place. It was also observed that PW Ramla Devi had stated that she was hospitalized for three-four days for the treatment of the said injuries but there is no treatment slip or discharge slip to substantiate her version.

After appreciating the entire evidence, the learned trial Court found that the prosecution witnesses were not cogent and reliable.

The appeal was admitted for hearing on 7. 9.2000 and now it is finally heard.

I have heard Shri V.K. Verma, Additional Advocate General for the State and Shri N.K. Thakur, learned counsel for the respondents and re-appraised the evidence. I am in full agreement with the observations made by the trial court that the prosecution evidence is full of contradictions and replete.

On the examination of the record, I find that the injured Ramla Devi was medically examined on 22.9.1998 by Dr. R.K. Garg (PW7). There is also another medico legal certificate on record of Smt. Ramla Devi dated 25.9.1998. Except one injury, the injuries mentioned in both the certificates are different and some of the injuries which have been mentioned in the M.L.C. Exhibit PW7/A did not find mention in the subsequent medical certificate. There is no explanation for this second medical examination. There is also no co-relation of both these certificates which, of course, to my mind, appears to be contradictory to each other which further strengthens the doubt in the mind of the Court regarding its authenticity. In fact, the prosecution was unable to prove that the injuries to Smt. Ramla Devi were caused by the respondents in the manner alleged, the very genesis of the occurrence appears to have been suppressed. Thus, I do not find any cogent reason to interfere with the impugned judgment of acquittal recorded by the learned trial Court.

Accordingly, the appeal is dismissed. The respondents are discharged of their bail bonds entered upon by them at any stage of the trial. The appeal is accordingly disposed of.

(Surinder Singh)
Judge.

August 14, 2007.